

## PART II: INTRODUCTORY SESSION - THE DAMAGES DIRECTIVE: GENERAL PRINCIPLES AND CHALLENGES

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**Link:** [JustCompetition – Training Module – Part II](#)

Welcome to the Bucharest session of the Damages Directive training sessions.

As you know, the Damages Directive is not yet transposed in most Member States and in the United Kingdom, our Government has published a consultation paper which includes the question “Do you think we have addressed all the questions that need to be addressed in transposing the Damages Directive?” and, in United Kingdom, we are particularly concerned about the limitation period and in each Member State, there will be your own concerns about what matters.

So, as we go through today, there will be questions that arise which nobody knows the answer and some of these questions are going to end up having to be dealt with by the judges in Luxembourg, as we discover the questions that haven’t been answered in the Directive.

Already, articles begin to appear about some of the relationships so, Assimakis Komninos has produced an article on the New Damages Directive in international arbitration: prospects after the CDC judgement, in which he suggests that the CDC judgement isn’t terribly clear.

Now maybe that’s a good thing because maybe it leaves some space open.

So, today, I’m delighted to be in Romania with Diana, she and I met when I visited to talk about communications laws in 2012 and then the Association of European Competition Law Judges met here after that, in 2013.

Liam is a past President of the Association and from the Supreme Court in Ireland and the three of us did the first session in Brussels.

So, what are we talking about?

The articles have been around for some time, they kept changing their numbers, but currently they are numbered 101 and 102; next time there’s a Treaty change they will probably change their numbers again.

Regulation 1/2003 has been around for a long time now, but many aspects of it have never really been properly explored.

The Brussels Regulation has recently been recast and that matters quite a lot in terms of how Courts are going to relate to each other, when multiple actions are underway.

There’s a communication on quantifying damages and a practical guidance, and then there’s the Directive itself.



And you have to read the previous ones in the light of the changes made by the Directive.

So, what are the principal themes?

There they are; and what the Damages Directive is about, is making private enforcement effective.

Up to this point, I think it's right to say that 21 Member States had not had a successful piece of private enforcement.

What that means is that private enforcement had been concentrated in a few Member States.

What are we not covering?

This is not going to be a major study on the lore of infringement, on investigations, on the scope of decisions, that's quite important when you are coming to a follow-on action or, nor we're going to deal in detail with jurisdiction, they will have to touch on jurisdiction.

Later on, we'll get on to damages and the rest of my slides are about that.

I think there are two major themes for me about this exercise.

The first is that these actions should not be too difficult or too impossible in Member States and you'll find that running through the Directive.

That if in a Member State it is all too difficult, then you'll not making private enforcement effective; those principles of effectiveness and equivalence are vital.

Sincere cooperation and having a level playing field means that what we are hoping for is the confident, coherent, competent and confident application of European competition law, right away across the Member States; and that really requires the judges to learn from each other.

And this is part of that process and I hope that there will be an ongoing process in which we learn from each other how we make this Directive work in practice.

